No.

(1)

Supreme Court, U.S.
FILED

10-495

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In The

OFFICE OF THE CLERK

SUPREME COURT OF THE UNITED STATES

LAURA ELLEN KAPLAN ,
Petitioner

V.

DANIEL RAY SLAYTER,
Respondent

On Petition for Writ of Certiorari
To The Louisiana Third Circuit Court of Appeal

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

WHETHER THE BIOLOGICAL MOTHER OF A CHILD HAS THE RIGHT TO DECIDE THE CHILD'S RELIGIOUS AND CULTURAL UPBRINGING WHEN THE REVIEWING COURT REVERSED THE TRIAL COURT'S GRANTING THE MOTHER SOLE CUSTODY.

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JURISDICTION

Although a review on a writ of certiorari is not a matter of right, but of judicial discretion a petition for a writ of certiorari will be granted for compelling reasons such as in the case at bar. Rule 10(c) states that when a state court decided an important question of federal law or federal question that has not been, but should be, settled by the United States Supreme Court petition for writ of certiorari should be granted.

CONSTITUTIONAL PROVISIONS

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. U.S.C.A. Amend. 1

STATEMENT OF THE CASE

Defendant/Applicant's judgment of sole custody and religious rights should not have been reversed by the Louisiana Third Circuit Court of Appeal. The appeal court's current ruling impacts Laura Kaplan's state and federal constitutional right to exercise her religion. The trial court and the appellate court agreed that the parties were contrary and that Daniel Ray Slayter was more responsible for same; however, the appellate court reversed the trial court. Under Louisiana jurisprudence, uncooperative parents are not good candidates for joint custody. Thus, joint custody was impossible and the jurisprudence required that sole custody for the child's best interest.

The appellate court reversed a sole custody judgment to a joint custody judgment whereby domiciliary custodian status was awarded to Laura Kaplan which caused the subject question before the court because now there are two custodians and two very divergent views of religion. The Louisiana Supreme Court denied review on April 30, 2010.

ARGUMENT

To fully understand the question presented, the "how" of this case pertaining to sole custody versus joint custody is very important in the context of the religion

issue.

There is no case on point in Louisiana state court or federal courts that can resolve this dispute. This particular issue is ripe for the United States Supreme Court to review as there is no uniform law of the land and that religion is a constitutional right and rearing children is also a fundamental constitutional right. At present, the state of Louisiana does not have any guidance and the highest court in the jurisdiction of Louisiana denied review. Laura Kaplan has a constitutional right to exercise her jewish religion according to its time honored ideals, beliefs and practices. Despite that the record showed that Laura Kaplan was Jewish and actively participated in her faith and that Rabbi Arnold Task of the Congregation Gemiluth Chasodim, testified in the trial court that he had known Laura Kaplan since she was 9 years old and that "the religion of the mother determines the religion of the child. And that's been the classic view within Judaism." Moreover, the trial court noted that Laura Kaplan was also the better parent to provide spiritual guidance for the child, she possessed a strong identification with her Jewish heritage and Daniel Ray Slayter repeatedly said he was an agnostic. The trial court in its opinion noted "yet, he said he wanted to raise the child as a Christian. If the father insists he does not believe in the Christian faith, one has to suspect that he simply cannot bring himself to agree with the mother." Trial Court's opinion.

The only Louisiana jurisprudence that the undersigned could find to be close on point was the case of *Pahal v. Pahal* 42,698 (La. App. 2nd Cir 8/29.07), 965 So.2d 574 where the second circuit appeal court ruled that a father's commitment to providing religious education was a significant factor in his being the domiciliary parent.

The trial court concluded that "[t]he evidence of continued and unreasonable conflict is clear and convincing evidence that these parents are not able to jointly parent

the child."

Notwithstanding the third circuit's opinion, that no explanation or facts were provided by the trial court to support sole custody was in the child's best interest, the trial judge stated, "Frankly, the court sees all of this action against the mother, the mother's family, the mother's Jewish faith, the judges and various attorneys, as an indication of Daniel Ray Slayter willingness to make a hard attack on anyone involved in the custody process....that Daniel Ray Slayter is the one who is more vicious in his attacks and the one who more consistently loses sight of the real effect of his conduct."

The trial court further stated that not even depravation of the father's company - is more harmful to the child than conflict, itself and that the court does believe that Daniel Ray Slayter is entirely responsible for the continued conflict and the publication of gross insults about the mother and the Kaplan family and for what is tantamount to harassment of those surrounding them."

An important example of a fact based example was provided by the trial court illustrating that the parents can't get along and that Daniel Ray Slayter was the antagonist when the court reasoned it did not believe that the father would ever understand or accept that "joint custody" would still mean that the domiciliary parent had the right to make a decision with which he disagreed. Clearly the trial court pondered if joint custody could work. The trial court after hearing testimony from the parties and witnesses concluded that joint custody was not in the child's best interest. The court went on to state "It is the number of conflicts and the virulence of the father's attacks that made the court decide joint custody would not work." Further, joint custody was not in the best interest of children where the parents were not communicating with one another or able to get along." LSA-C.C. art. 131, subd. C(2)(j).

The following is a summary of several cases stretching across the country in various stages of procedural development that illustrate this country's need for a ruling from this court on this issue. In a handful of states, courts have used different legal standards to decide cases where religion and custody collide.

In *Munoz v. Munoz,* 79 Wash. 2d 810, 489 P.2d 1133 (1971), the state of Washington's highest court ruled that exposing children to two different religions (Mormon and Catholic) was not harmful in and of itself and therefore does not justify restricting a parent's religious activities.

In *Pater v. Pater,* 63 Ohio St. 3d 393, 588 N.E. 2d 794 (1992), Ohio's Supreme Court ruled that religious customs (Jehovah's Witness in this case) that restrict a child's social activities -- even if they separate the child from peers or go against community standards -- are not enough to justify court intervention unless the practices harm the mental or physical health of the child.

In *Kendall v. Kendall,* 426 Mass. 238, 687 N.E.2d 1228 (1997), the highest court in Massachusetts ruled that a father's verbal threats and physical acts toward his children, which were designed to interfere with their Orthodox Jewish religious practices, were enough to warrant restrictions on his First Amendment and parenting rights. (A court-appointed doctor found that the father's actions -- cutting off his son's payes (the curls customarily worn by Orthodox Jewish males) and telling his children that anyone outside the fundamentalist faith was "damned to go to hell" --caused mental and emotional harm to the children. The court barred the father from sharing his religious beliefs, praying, or studying the Bible with his children if those activities would cause the kids to reject their mother or their Jewish identity or cause them emotional distress.

In a few states, courts do not apply the actual or substantial harm standard or the risk of harm standard. Instead, these courts use a simple rule: The parent with

sole legal custody has exclusive control over the child's religious education. If a dispute arises over religious upbringing, the court will curtail the noncustodial parent's religious activities and enforce the custodial parent's desires. These courts reason that interfering with the noncustodial parent's religious activities does not violate First Amendment rights, because the restrictions apply only to the time period in which the parent is with the children. At all other times, the parent is free to practice whatever religion the person chooses.

In *Johns v. Johns,* 53 Ark. App. 90, 918 S.W. 2d 728 (1996), an Arkansas court deferred to the custodial parent's wishes. In this case, the father complained that the mother, who had legal and physical custody of the children, was preventing him from visiting with his kids. The mother said she was refusing visits because he didn't take the kids to church and Sunday school. The trial court ordered Mr. Johns to bring the kids to church. The father appealed. The appellate court agreed with the trial court, holding that because the mother was the custodial parent, her desire that the kids attend church each week was paramount.

In *Zummo v. Zummo,* 394 Pa. Super. 30, 574 A.2d 1130 (1990), the divorcing couple's dispute about the religious upbringing of their children was resolved by ordering the father to take the children to Jewish services (the mother's religion) and also allowing him to bring the children to Catholic services (his religion). The court believed that, because the couple shared joint legal custody, they each had the right to instill religious beliefs in their kids.

A reading of the above cases gives no consensus of opinion, standard of proof or burden of proof or any real solid direction for any levels of court. As is illustrated by the above cases, any given number of results can occur from the exact same case in differing jurisdictions pertaining to Constitutional fundamental rights.

CONCLUSION

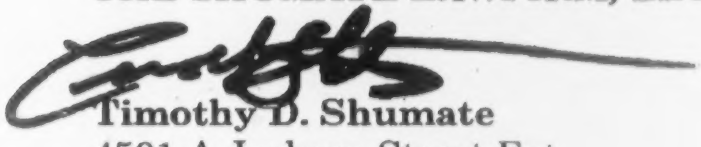
Joint Custody was impossible in this case. The trial court judged it correctly. The trial court expressly ruled on the right of religious upbringing to be the sole custodian's right.

Laura Kaplan's constitutional right to exercise her religion was violated by the third circuit's reversal pertaining to sole custody and the religious rights of the mother, specifically that the child was born Jewish and was raised Jewish and now the child will have a different theological dogma to reconcile in her young not fully developed mind.

The question presented in this petition is in dire need of resolution not only for the petitioner, but for the entire United States of America.

Respectfully Submitted,

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